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10/790,200	03/02/2004	Keisuke Hatasaki	520.43557X00	1024

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EXAMINER	
NAHAR, QAMRUN	
ART UNIT	PAPER NUMBER
2191	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/790,200	HATASAKI, KEISUKE	
	Examiner	Art Unit	
	QAMRUN NAHAR	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 January 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the amendment filed on 01/22/2008.

2. The objection to the abstract is withdrawn in view of applicant's amendment.

3. The rejection under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention to claims 1-10 is withdrawn in view of applicant's amendment.

4. Claims 1-16 are pending.

Response to Amendment

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 12 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 12 recites the limitation "said source-code patch" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Therefore, this limitation is interpreted as "a source-code patch".

8. Claim 15 recites the limitation "said source-code patch" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Therefore, this limitation is interpreted as "a source-code patch".

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-2, 4-6 and 9-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rodriguez (U.S. 6,487,718).

Per Claim 1:

The Rodriguez patent discloses:

- acquiring user computer system information including information on hardware employed in said user computer system and information on said software installed in said user computer system ("Client 402 includes image 406, which is a complete collection of the user operating environment, including for example, system memory … A snapshot or copy of image 406 is made from client 402 to form a snapshot image, which is stored on server 400." in column 6, lines 30-37 and column 7, lines 25-35)

- constructing a test environment for testing operations of said user computer system based on said acquired user computer system information; updating said software in said test environment by using a software-updating patch; determining whether or not said operations of said user computer system are carried out normally by execution of said updated software in said test environment ("... This snapshot image is booted or started on a network computer in a service environment ... This network computer is selected to have a configuration that is identical to that of the client from which the image was taken. The new application is installed ... and the application is tested in the new environment ..." in column 7, lines 55-63)

- and supplying said software-updating patch to said user computer system and using said software-updating patch to update said software installed in said user computer system if said operations of said user computer system are determined to be normal ("... determine whether the client that is to receive the updated snapshot image is turned on so that the snapshot image can be sent to the client. ..." in column 7, line 63 to column 8, line 3).

Per Claim 2:

The Rodriguez patent discloses:

- wherein said user computer system comprises a means for monitoring said user computer system information and a means for updating said software installed in said user computer system; and wherein said user computer system acquires said software-updating patch and

uses said software-updating patch to update said software installed in said user computer system without halting execution of a program relevant to said software (column 8, lines 38-48).

Per Claim 4:

The Rodriguez patent discloses:

- transmitting information on said user computer system from said user computer system to said vendor computer system ("Client 402 includes image 406, which is a complete collection of the user operating environment, including for example, system memory … A snapshot or copy of image 406 is made from client 402 to form a snapshot image, which is stored on server 400." in column 6, lines 30-37 and column 7, lines 25-35)

- selecting a proper software-updating patch in said vendor computer system based on said information on said user computer system and transmitting said selected proper software-updating patch to said user computer system ("… determine whether the client that is to receive the updated snapshot image is turned on so that the snapshot image can be sent to the client. …" in column 7, line 63 to column 8, line 3)

- constructing a test environment based on said software-updating patch received from said vendor computer system; using said test environment for evaluating said software-updating patch to give a result of evaluation; using said software-updating patch for

updating said software installed in said user computer system if said result of evaluation is good; and transmitting said result of evaluation to said vendor computer system to prompt said vendor computer system to transmit another software-updating patch if said result of evaluation is bad ("… This snapshot image is booted or started on a network computer in a service environment … This network computer is selected to have a configuration that is identical to that of the client from which the image was taken. The new application is installed … and the application is tested in the new environment …" in column 7, lines 55-63).

Per Claim 5:

The Rodriguez patent discloses:

- a user computer system management unit having a means for receiving information on said user computer system from said user computer system ("Client 402 includes image 406, which is a complete collection of the user operating environment, including for example, system memory … A snapshot or copy of image 406 is made from client 402 to form a snapshot image, which is stored on server 400." in column 6, lines 30-37 and column 7, lines 25-35)

- a means for constructing a test environment for said user computer system based on said information on said user computer system and a software-updating patch; a means for examining said software-updating patch by using said test environment to determine whether or not said software-updating patch is suitable for said user computer system ("… This snapshot image is booted or started on a network computer in a service environment … This

network computer is selected to have a configuration that is identical to that of the client from which the image was taken. The new application is installed … and the application is tested in the new environment …" in column 7, lines 55-63**)**

- and a means for transmitting said software-updating patch determined to be suitable for said user computer system to said user computer system ("… determine whether the client that is to receive the updated snapshot image is turned on so that the snapshot image can be sent to the client. …" in column 7, line 63 to column 8, line 3).

Per Claim 6:

The Rodriguez patent discloses:

- a means for logically dividing a real machine of said vendor computer system into a plurality of logical partitions; and a means for constructing said test environment for one of said logical partitions (column 6, lines 37-34).

Per Claim 9:

This is a system version of the claimed method discussed above, claim 4, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also anticipated by Rodriguez.

Per Claim 10:

The Rodriguez patent discloses:

- a means for logically dividing a real machine of said user computer system into a plurality of logical partitions; and a means for constructing said test environment for one of said logical partitions (column 6, lines 37-34).

Per Claim 11:

The Rodriguez patent discloses:

- wherein said software-updating patch includes a source-code patch (column 7, lines 55-63).

Per Claim 12:

The Rodriguez patent discloses:

- wherein said source-code patch is compiled (column 7, lines 55-63).

Per Claim 13:

The Rodriguez patent discloses:

- wherein said software-updating patch is supplied to said user computer system having said user computer system information (column 8, lines 1-3).

Per Claims 14-16:

These are system versions of the claimed method discussed above (claims 11-13, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Rodriguez.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez (U.S. 6,487,718) in view of Lau (U.S. 7,191,435).

Per Claim 3:

The rejection of claim 1 is incorporated, and further, Rodriguez does not explicitly teach wherein said user computer system: acquires a result of a test conducted to determine whether or not said operations of said user computer system are carried out normally by execution of said updated software in said test environment; shows said result to a user; and asks said user a question as to whether or not said software installed in said user computer system is to be updated. Lau teaches wherein said user computer system: acquires a result of a test conducted to determine whether or not said operations of said user computer system are carried out normally

by execution of said updated software in said test environment; shows said result to a user; and asks said user a question as to whether or not said software installed in said user computer system is to be updated (column 11, lines 60-65 and column 12, lines 7-12).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Rodriguez to include wherein said user computer system: acquires a result of a test conducted to determine whether or not said operations of said user computer system are carried out normally by execution of said updated software in said test environment; shows said result to a user; and asks said user a question as to whether or not said software installed in said user computer system is to be updated using the teaching of Lau. The modification would be obvious because one of ordinary skill in the art would be motivated to facilitate informed decision processes by a software customer (Lau, column 2, line 66 to column 3, line 4).

13. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez (U.S. 6,487,718) in view of McCaleb (U.S. 6,751,794).

Per Claim 7:

The rejection of claim 5 is incorporated, and further, Rodriguez does not explicitly teach a means for recording said software-updating patch in a patch database; and a means for accepting a request to update said user computer system from said user computer system and retrieving a software-updating patch proper for said request to update said user computer system from said patch database. McCaleb teaches a means for recording said software-updating patch

in a patch database; and a means for accepting a request to update said user computer system from said user computer system and retrieving a software-updating patch proper for said request to update said user computer system from said patch database (column 3, lines 64-67 and column 4, lines 31-44).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the system disclosed by Rodriguez to include a means for recording said software-updating patch in a patch database; and a means for accepting a request to update said user computer system from said user computer system and retrieving a software-updating patch proper for said request to update said user computer system from said patch database using the teaching of McCaleb. The modification would be obvious because one of ordinary skill in the art would be motivated to supply the proper patch based on user computer system information (McCaleb, column 38-50).

Per Claim 8:

The rejection of claim 5 is incorporated, and further, Rodriguez does not explicitly teach a means for recording information received from said user computer system as said information on said user computer system in a user computer system-information database; and a means for retrieving said information on said user computer system from said user computer system-information database. McCaleb teaches a means for recording information received from said user computer system as said information on said user computer system in a user computer system-information database; and a means for retrieving said information on said user computer system from said user computer system-information database (column 4, lines 20-39).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the system disclosed by Rodriguez to include a means for recording information received from said user computer system as said information on said user computer system in a user computer system-information database; and a means for retrieving said information on said user computer system from said user computer system-information database using the teaching of McCaleb. The modification would be obvious because one of ordinary skill in the art would be motivated to supply the proper patch based on user computer system information (McCaleb, column 38-50).

Response to Arguments

14. Applicant's arguments filed on 01/22/2008 have been fully considered but they are not persuasive.

In the remarks, the applicant argues that:

a) Rodriguez fails to teach or suggest "constructing a test environment for testing operations of said user computer system based on said acquired user computer system information; updating said software in said test environment by using a software-updating patch; determining whether or not said operations of said user computer system are carried out normally by execution of said updated software in said test environment; and supplying said software- updating patch to said user computer system and using said software-updating patch to update said software installed in said user computer system if said operations of said user computer system are determined to be normal" as recited in claim 1, and as similarly recited in claims 4, 5 and 9.

Examiner's response:

a) Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

The Examiner has specifically pointed out where Rodriguez teaches the above limitation. However, applicant has failed to point out the error in the citation provided for the above limitation. For the sake of clarity, the Examiner is repeating the citation for the above limitation as follows:

Rodriguez teaches constructing a test environment for testing operations of said user computer system based on said acquired user computer system information; updating said software in said test environment by using a software-updating patch; determining whether or not said operations of said user computer system are carried out normally by execution of said updated software in said test environment ("... This snapshot image is booted or started on a network computer in a service environment ... This network computer is selected to have a configuration that is identical to that of the client from which the image was taken. The new application is installed ... and the application is tested in the new environment ..." in column 7, lines 55-63); and supplying said software-updating patch to said user computer system and using said software-updating patch to update said software installed in said user computer system if said operations of said user computer system are determined to be normal ("... determine whether the client that is to receive the updated snapshot image is turned on so that the snapshot image can be sent to the client. ..." in column 7, line 63 to column 8, line 3).

In the remarks, the applicant argues that:

b) Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Rodriguez in view of U.S. Patent No. 7,191,435 to Lau. Claim 3 is dependent on claim 1. Therefore, claim 3 is allowable for at least the same reasons previously discussed regarding independent claim 1.

Claims 7 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of U.S. Patent no. 6,751,794 to McCaleb. Claims 7 and 8 are dependent on claim 5. Therefore, claims 7 and 8 are allowable for at least the same reasons previously discussed regarding independent claim 5.

Claims 11-16 were added to more clearly describe features of the present invention. Claims 11-13 are dependent on claim 1, and claims 14-16 are dependent on claim 5. Therefore, claims 11-16 are allowable for at least the same reasons previously discussed regarding independent claims 1 and 5.

In view of the foregoing amendments and remarks, Applicants submit that claims 1-16 are in condition for allowance. Accordingly, early allowance of claims 1- 16 is respectfully requested.

Examiner's response:

b) The Examiner has addressed applicant's arguments regarding claims 1, 4, 5 and 9 in the Examiner's Response (a) above. See the Examiner's Response (a) above.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication from the examiner should be directed to Qamrun Nahar whose telephone number is (571) 272-3730. The examiner can normally be reached on Mondays through Thursdays from 9:00 AM to 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y Zhen, can be reached on (571) 272-3708. The fax phone number for the organization where this application or processing is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Qamrun Nahar/
Qamrun Nahar
May 21, 2008

/Ted T. Vo/
Primary Examiner, Art Unit 2191